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FCC Mail Room

The Honorable Kevin J. Martin, Chairman
The Honorable Michael J. Copps, Commissioner
The Honorable Jonathan S. Adelstein, Commissioner
The Honorable Deborah Taylor Tate, Commissioner
The Honorable Robert M. McDowell, Commissioner

Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Dear Chairman Martin, Commissioner Copps, Commissioner Adelstein, Commissioner Tate, and Commissioner McDowell:

As all of you know, the United States has benefited enormously from the contributions of small businesses, both through their participation in markets that would be under-served or unserved but for their existence, and—even more importantly—through the incredible innovations that they have produced. With this background in mind, we are writing to express some concerns that we have regarding the FCC's upcoming 700 MHz auction that may prevent the auction from being as successful as possible.

In order to ensure that new entrants and small businesses can truly participate in the upcoming auction, it is necessary to recognize certain costs that these companies pay to the incumbents for access to the incumbent's networks -- specifically the cost of "backhaul transport" or the special access lines that run from cell towers to central office switching facilities. Chairman Markey highlighted this concern in a letter to you from the House Subcommittee on Telecommunications and the Internet, dated May 23, 2007. While we agree with many of the points raised in Chairman Markey's letter, we wanted to stress the importance of reforming the state of "special access" regulation prior to the initiation of the 700 MHz auction, in order to ensure maximum participation by small carriers and new entrants.

First, auction participants cannot formulate their best and final bid prices unless they know what their recurring costs of backhaul transport from their cell sites to their cellular switching centers will be. As it stands, unless the Commission acts to reform special access pricing, new entrants and small businesses will be left to suffer unpredictable (and often high) costs.

This situation makes accessing venture capital even more difficult. A more stable regulatory playing field will enable investors and entrepreneurs to make better decisions.

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Second, some have mentioned that the "record" in the FCC's ongoing proceeding—which is now more than two years old—should be "refreshed." It is not entirely clear what is meant, or what is to be gained, by "refreshing the record" in the existing special access proceeding that has been languishing for the past 3 years at the Commission. For one thing, the Commission has never formally "closed" its record in this proceeding. In fact, carriers update the record frequently. The Commission itself could also update the record by utilizing the extensive market concentration figures it has calculated for local transmission service as part of the SBC/AT&T, Verizon/MCI, and AT&T/BellSouth mergers. Furthermore, it is somewhat puzzling as to whether any market behavior should have changed as yet as a result of the mergers, because the FCC's merger conditions have "frozen" prices and terms in the markets most concentrated by the mergers until the end of 2007.

Given the importance of the upcoming 700 MHz auctions, we think it is imperative that the Commission take the responsible course of action and reform its "special access" rules, and, thereby, to clarify a critical component of prospective bidders' cost modeling by clearly resolving the prices and terms on which the incumbent LECs must provide access to their transmission.

Sincerely

A handwritten signature in black ink, appearing to read "Patrick Bustamante", written in a cursive style.

Patrick Bustamante
President